



EP Voluntary Compliance

Internal Revenue Service

**Revenue Procedure 2003-44 –
Changes to the Employee Plans Compliance
Resolution System (“EPCRS”)**



Program Changes

- **All of EPCRS' voluntary correction procedures were consolidated into a single Voluntary Correction Program (VCP); special procedures (e.g., VCO, VCS, VCT, and VCSEP) were eliminated.**
- **EPCRS was expanded to apply to SIMPLE IRA Plans.**



Sample Formats for VCP Submissions

Added Appendix D to provide two sample formats to assist Plan Sponsors and their representatives in preparing VCP submissions:

- 1. A generic format that can be used for Operational Failures, Demographic Failures, Employer Eligibility Failures, and Plan Document Failures (other than nonamenders).**
- 2. A format designed specifically for nonamenders.**



408(q) Deemed IRAs

The Service is seeking comments regarding appropriate correction for failures in Qualified Plans, 403(b) Plans, and 457(b) eligible governmental plans with § 408(q) “deemed IRA” provisions. Submissions relating to such plans will be accepted by the Service on a provisional basis outside of EPCRS.



VCP Compliance Fees

- **Completely revised and reorganized VCP compliance fee structure.**
- **Established a fixed fee for all VCP requests (including Anonymous Submissions) that is generally based on the number of participants/employees in the plan, as outlined on the following slides:**



VCP Compliance Fees (continued)

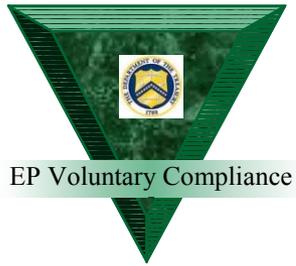
Qualified Plans and 403(b) Plans (including Anonymous Submissions):

<u># of participants/employees</u>	<u>Fee</u>
20 or fewer	\$ 750
21 to 50	1,000
51 to 100	2,500
101 to 500	5,000
501 to 1,000	8,000
1,001 to 5,000	15,000
5,001 to 10,000	20,000
Over 10,000	25,000



VCP Compliance Fees (continued)

Nonamenders – Fees are determined in accordance with the fee schedule on the previous slide, but if Plan Sponsors submit VCP requests within the one-year period following the expiration of their plans' remedial amendment periods, their fees are reduced by 50%.



VCP Compliance Fees (continued)

SEPs and SIMPLE IRA Plans (including Anonymous Submissions) = \$500

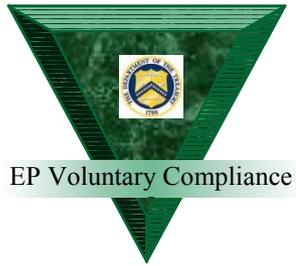
Group Submissions – The fee is based on the number of plans affected by the failure(s):

- **First 20 plans = \$10,000**
- **Each additional plan = \$250**
- **Maximum fee for all plans = \$50,000**



VCP Compliance Fees (continued)

**Changed the timing of the fee payment –
For all VCP requests, a fee payment must
be submitted with the initial request. Any
additional fees (such as those stemming
from the retention of Excess Amounts in
403(b) Plans, SEPs, or SIMPLE IRA
Plans, or in the case of a Group
Submission) will be due when the
compliance statement is signed.**



VCP Compliance Fees (continued)

- **Updated the form of payment – It is no longer required to be in the form of a certified or cashier’s check.**
- **Eliminated Form 5500-series return asset data from the Required Documents list.**



VCP Compliance Fees (continued)

The compliance fee for egregious failures unchanged, and remains a negotiated percentage (not to exceed 40%) of the Maximum Payment Amount (or Total Sanction Amount for a 403(b) Plan).



EGTRRA Nonamenders

EPCRS is now available to correct Qualified Plans that have failed to adopt timely good faith plan amendments for the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA).



EGTRRA Nonamenders (continued)

- 1. Terminated plans:**
 - a. VCP request must include the good faith amendments and Form 5310 determination letter application.**
 - b. Upon completion, both a compliance statement and a determination letter will be issued.**
 - c. Plan Sponsor must adopt the good faith amendments within the time period specified in the compliance statement.**



EGTRRA Nonamenders (continued)

2. Ongoing plans:

- a. VCP request must include the good faith amendments.**
- b. Upon completion, a compliance statement will be issued. NOTE: Since our determination letter program has not opened for EGTRRA amendments, a determination letter will not be issued.**
- c. Plan Sponsor must adopt the good faith amendments within the time period specified in the compliance statement.**



VCP Procedures

- **Clarified that all terminated plans may resolve Qualification Failures under VCP “whether or not the plan trust is in existence.”**
- **Changed the fee for modifying a compliance statement after issuance – minor modifications requested no later than 30 days after the compliance statement is issued will be charged a fee equal to the lesser of the original fee or \$3,000.**



VCP Submission Requirements

Plan Sponsor or the representative identifies

- **The type of plan being submitted, and**
- **Whether the submission is a Group or Anonymous Submission, if applicable.**



Anonymous & Group Submissions

Continue be ongoing parts of VCP.

Expanded to apply to SEPs and SIMPLE IRA Plans.

Anonymous Submissions - Guidance was added regarding when to submit:

- **Power of attorney statement,**
- **Penalty of perjury statement, and**
- **Related determination letter applications.**



Anonymous & Group Submissions (continued)

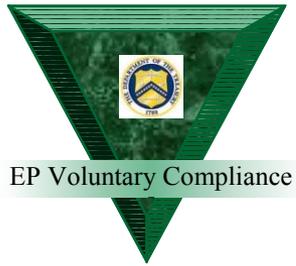
Group Submission process was simplified:

- 1. A power of attorney for each affected plan is no longer required.**
 - a. Eligible Organization must provide notice to affected Plan Sponsors regarding the Group Submission.**
 - b. Once the compliance statement is issued, the Eligible Organization must submit a certification that each affected Plan Sponsor received the notice.**



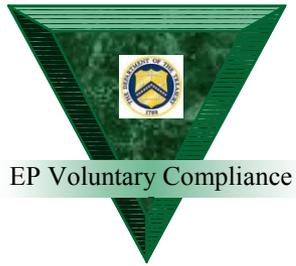
Anonymous & Group Submissions (continued)

- **Notice must be provided at least 90 days before the Eligible Organization provides the required certifications and identifying information regarding the affected plans to the Service**
- **Plan Sponsor may opt out of coverage by Group Submission**



Procedures for Related Determination Letter Applications

- **Clarified that determination letter (DL) applications will also be required for Demographic Failures that are corrected under VCP via retroactive plan amendment.**
- **Clarified that DL applications for corrective plan amendments adopted under the Self-Correction Program (SCP) must be submitted before the end of the SCP correction period.**



Procedures for Related Determination Letter Applications (continued)

Updated the description of amendments for which a DL application will not be required – “ . . . an amendment designated by the Service as a model amendment or . . . a prototype or volume submitter plan for which the Plan Sponsor has reliance on the plan’s opinion or advisory letter as provided in Rev. Proc. 2003-6, 2003-1 I.R.B. 191 . . .”).



Definitions

Favorable Letter – generally, a plan is considered to have a Favorable Letter if:

- 1. The remedial amendment period for GUST is still open, and**
- 2. It is either:**
 - a. A new plan (effective on or after December 7, 1994), or**
 - b. An existing plan with a TRA '86 letter.**



Definitions (continued)

Overpayment – Expanded to include any type of distribution that results in an Overpayment.

Under Examination – Clarified that a plan for which any determination letter application (i.e., not just Form 5310) has been submitted may be considered Under Examination.

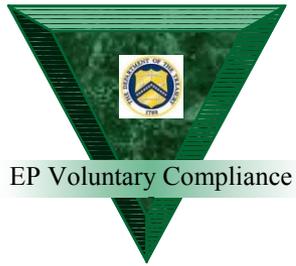
SIMPLE IRA Plan – Added definition



Correction for SEPs and SIMPLE IRA Plans

Defined “reasonable and appropriate” correction for SEPs and SIMPLE IRA Plans as correction methods permitted under Appendices A and/or B that apply to SEPs or SIMPLE IRA Plans.

Expanded existing correction guidance for SEPs (e.g., correction of failures to satisfy deferral percentage test, treatment of undercontributions, etc.) so that it also applies to SIMPLE IRA Plans.



Correction for SEPs and SIMPLE IRA Plans (continued)

Added a section regarding Excess Amounts:

1. Distribution of Excess Amounts:

a. To the participant:

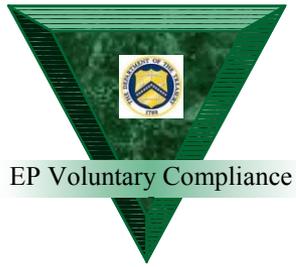
- Elective deferrals, adjusted for earnings through the date of correction**
- Includible in participant's gross income in the year of distributions**
- Must be reported on Form 1099-R for the year of the distribution**



Correction for SEPs and SIMPLE IRA Plans (continued)

b. To the Plan Sponsor:

- **Employer contributions, adjusted for earnings through the date of correction**
- **Not includible in the gross income of the participant**
- **Cannot be deducted by the Plan Sponsor**
- **Must be reported on Form 1099-R as \$0 taxable amount**



Correction for SEPs and SIMPLE IRA Plans (continued)

- 2. Retention of Excess Amounts:**
 - a. Plan Sponsor will be required to pay a special fee (in addition to the VCP compliance fee that is submitted with the initial VCP request)**
 - b. Special fee will equal at least 10% of the Excess Amount, excluding earnings**



Correction for SEPs and SIMPLE IRA Plans (continued)

- 3. De minimis Excess Amounts:**
 - a. \$100 or less**
 - b. Can be attributable to elective deferrals or employer contributions**
 - c. Plan Sponsor is not required to distribute the Excess Amount**
 - d. Special fee will not apply**



General Correction Guidance

Clarified two of the exceptions to full correction:

- 1. Reasonable estimates – When determining a reasonable correction method, the Service will take into account situations where plan data is unavailable.**
- 2. Recovery of small Overpayments – The Plan Sponsor is required to “notify the participant or beneficiary that the Overpayment is not eligible for favorable tax treatment accorded to distributions from Qualified Plans” regardless of whether the Plan Sponsor seeks the return of the Overpayment.**



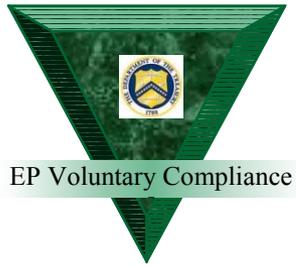
General Correction Guidance (continued)

Added guidance (within section 6) regarding the correction of failures to obtain required spousal consent under §§ 401(a)(11) and 417. Normally, the affected participant and spouse are notified that the spouse can provide spousal consent to the distribution or the participant can repay the distribution and receive a QJSA. If spousal consent is not obtained, the spouse is entitled to the QJSA benefit that would have been payable to the spouse upon the death of the participant had a QJSA been provided to the participant, and such spousal benefit must be provided if a claim is made by the spouse.



General Correction Guidance (continued)

Set forth a correction method under VCP for plan loan failures – In situations where a loan to a participant is treated as a deemed distribution under § 72(p), the distribution may be reported on Form 1099-R for the year of correction with respect to the affected participant.



Examples of Approved Correction Methods

Revised the Plan Amendment Correction Method described in Appendix B for the Inclusion of Ineligible Employee Failure – It was expanded to apply to ineligible employees who “completed the plan’s minimum age or service requirements but became a participant in the plan on a date earlier than the applicable plan entry date”



Audit Closing Agreement Program ("Audit CAP")

Revised the factors considered in determining the amount of the sanction under Audit CAP:

- 1. Removed the factor involving consideration of the VCP compliance fee to clarify that the Maximum Payment Amount is the basis upon which Audit CAP sanctions are negotiated.**
- 2. Added a factor, relating only to Qualified Plans, involving failure(s) that are discovered by the Service during the determination letter process.**



Effective Date

Generally effective October 1, 2003, but Plan Sponsors are permitted, at their option, to retroactively apply the provisions of Revenue Procedure 2003-44 on or after June 5, 2003.



Effective Date (continued)

Otherwise, Revenue Procedure 2003-44 is effective:

- **SCP – for failures for which correction is not complete before October 1, 2003**
- **VCP – for applications submitted on or after October 1, 2003**
- **Audit CAP – for examinations begun on or after October 1, 2003**